

Internal Revenue Service

memorandum

RH. TR-45-1289-95

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to: National Director, Compliance Research CP:R
Attn: Gary Morris CP:R:R:AR

from: Assistant Chief Counsel (Income Tax and Accounting)
CC:DOM:IT&A

subject: Dynamic Digitized Signature Test (DigEST) Proposal

This responds to your June 12, 1995 memorandum requesting our views on the feasibility of the DigEST proposal.

ISSUES

1. Whether the dynamic digitized signature is sufficient to ~~authenticate and verify the return for purposes of sections 6061 and 6065 of the Internal Revenue Code of 1986.~~
2. Whether the Service may prescribe dynamic digitized signatures for DigEST program filers by form instructions.

CONCLUSIONS

1. The dynamic digitized signature is sufficient to authenticate and verify the return for purposes of sections 6061 and 6065 of the Internal Revenue Code of 1986.
2. Section 301.6061-1T of the Temporary Regulations on Procedure and Administration and section 1.6695-1T of the Temporary Income Tax Regulations authorize the Service to prescribe the method of signing any return, statement, or other document by form, instruction, or other appropriate guidance. Therefore, the Service may prescribe dynamic digitized signatures for DigEST program filers and preparers by form instructions.

FACTS

The Test

Based on the June 7, 1995 memorandum from the National Director, Compliance Research, and supplemental information obtained from Mr. Kerr and Mr. Morris, it is our understanding that DigEST will be conducted to study taxpayers' acceptance of paperless electronic filing and the technical feasibility of the

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small universe of filers at two military VITA sites, an accounting office, and two or three preparer offices.

Electronically Filed Form 8453

As we understand the proposal, the DigEST return will be filed like the current ELF return, except for the method of signing. Current ELF returns are composite; i.e., an ELF filer submits a separate paper Form 8453 containing a signed perjury statement. DigEST returns will be completely paperless. The filer will not submit the separate paper Form 8453.

After logging on the DigEST program, a preparer will key in the appropriate return information provided by the filer. Then the preparer and the DigEST filer will sign the Form 8453 electronically via a digitized signature pad. A Form 8453 will appear on the screen. A "gravity box" will appear in the center of this Form 8453. The gravity box will contain an enlarged image of the signature line from the Form 8453. The gravity box will also contain a statement to indicate that the signature line in the gravity box is the signature line from the Form 8453. ~~The gravity box will not obstruct the view of the penalties of perjury statement as it appears on the Form 8453.~~

First, the preparer will sign the Form 8453 using the digitized pad. As the preparer signs the digitized pad, the preparer's signature will appear on the screen inside the gravity box. After the preparer signs the Form 8453, a gravity box will appear on the screen for the taxpayer's signature. The taxpayer will also sign the Form 8453 using the digitized pad. In the case of a joint return, another gravity box will appear on the screen for the spouse's signature.

The completed return and Form 8453 will be electronically transmitted to the Memphis Service Center and an electronic copy of the return will be retained by the preparer either on disk or on the computer. The taxpayer will receive a computer-generated paper copy of the return, including the Form 8453 with the taxpayer's signature on the signature line.

Biometric Token

A "biometric token" will link the taxpayer's dynamic digitized signature to the return. The biometric token consists of four parts: 1) the vector, 2) the check sum, 3) the date and time stamp, and 4) the user identification (probably name and social security number).

The biometric token is encrypted and sent electronically from the preparer to the Memphis Service Center. At the Service Center, a front-end computer process splits the biometric token from the return. The biometric token is stored separately from

the return on a separate disk. The return is be stored using current Service Center procedures for storing ELF returns.

To retrieve the taxpayer's DigEST return, the Service must separately retrieve the return and the biometric token, or signature. The Service accesses the biometric token using the taxpayer's social security number. The program designers have not yet determined how the signature will appear on the computer-generated Form 8453 retrieved from storage. The taxpayer's signature could appear either in the gravity box or on the signature line of the Form 8453. The Service accesses the remainder of the return using current Service Center procedures for retrieving an ELF return. Information contained in the biometric token is used to match the taxpayer's signature to the taxpayer's return. We understand that the biometric token linkage has proven reliable in commercial settings.

DISCUSSION

Authentication and Verification

~~Section 6061 of the Code provides that, except as otherwise provided by sections 6062 and 6063, relating to corporation and partnership returns respectfully, any return, statement, or other document required under the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.~~

Section 6065 of the Code provides that, except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made by the Code or regulations shall contain or be verified by a written declaration that it is made under penalties of perjury. Section 1.6065-1(a) of the Income Tax Regulations requires the person signing the return to verify by a written declaration that it is made under the penalties of perjury. Section 1.6065-1(b) of the regulations generally requires the person preparing a return to verify by a written declaration that it is prepared under the penalties of perjury.

Section 6065 of the Code gives the Secretary very broad interpretative authority to prescribe the form of verification. See H.R. Rep. No. 1337, 83d Cong., 2d Sess., A400 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. (1954). Currently the Service requires a signed perjury statement as verification under section 6065.

The common law definition of signature is very broad and flexible. 1 U.S.C. section 1 provides that "in determining the meaning of any Act of Congress, unless the context indicates otherwise, signature includes a mark when the person making the same intended it as such." Further, the generally accepted legal

definition of signature is very broad: "[t]he act of putting one's name at the end of an instrument to attest its validity; the name thus written. A signature may be written by hand, printed, stamped, typewritten, engraved, photographed, or cut from one instrument and attached to another, and a signature lithographed on an instrument by a party is sufficient for the purpose of signing it; it being immaterial with what kind of instrument a signature is made." (Emphasis added.) See Black's Law Dictionary, 1381-82 (6th ed. 1990). In fact, much private and public commerce accepts electronic signatures.

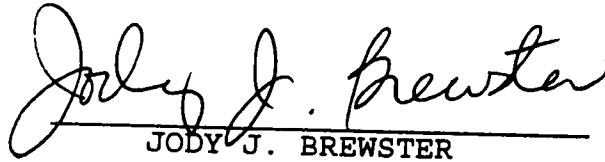
Nothing in the Code or regulations suggests a definition of signature narrower than the common law definition. See section 301.6061-1T of the temporary regulations (authorizing the Secretary to prescribe methods of signing). The dynamic digitized signature described in the DigEST concept is designed to accomplish the two essential purposes of a signature: 1) authenticate the return as that of the taxpayer and 2) verify that the return information is correct under the penalties of perjury. Because it satisfies the elements of both sections 6061 and 6065 of the Code, the dynamic digitized signature constitutes an acceptable signature.

We believe that the dynamic digitized signatures are admissible. The admissibility into evidence of the dynamic digitized signature printouts will be determined by the same evidentiary standards that generally govern the admissibility of computer printouts. Computer-generated evidence has been accepted by the courts for many years. See Transport Indemnity Co. v. Seib, 178 Neb. 253, 132 N.W. 253 (1965).

Prescribing Dynamic Digitized Signatures by Form Instructions

Section 301.6061-1T of the temporary regulations authorizes the Secretary to prescribe methods of signing for filers by form, instruction, or other appropriate guidance. Section 1.6695-1T of the temporary regulations authorizes the Secretary to prescribe the methods of signing for preparers. See also sections 7.01(3), 8.01, and 8.02 of Rev. Proc. 94-63, 1994-1 C.B. 785, amplified by Rev. Proc. 94-63A, 1994-1 C.B. 795, incorporating preparer responsibilities into ELF.

Under the regulations the Commissioner has broad authority to prescribe the method of signing. The DigEST program will be offered only to filers at selected test sites, not to the public generally. You propose prescribing dynamic digitized signatures in instructions available at the participating test sites. The regulations permit this method of prescribing dynamic digitized signatures. The law and regulations do not require that dynamic digitized signatures be prescribed by generally published guidance.


JODY J. BREWSTER

cc: Pat Dowling CC:MS&P
Lynn Casimir CC:MS&P
Heather Maloy C
Peggy Rule T:S
Bob Kerr CP:R
